



UPPER SEVEN LAW

P.O. BOX 31
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April 18, 2025

Molly C. Dwyer, Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: Response to Rule 28(j) Letter in *Imperial Sovereign Court of the State of Montana v. Knudsen*, No. 23-3581 (oral argument held June 4, 2024)

Dear Ms. Dwyer,

Plaintiffs respectfully respond to the State’s Rule 28(j) letter filed April 17, 2024, which cites *Arizona Attorneys for Criminal Justice v. Mayes*, 127 F.4th 105 (9th Cir. 2025). *Mayes* involves the application of previously briefed legal standard to an immediately distinguishable statute and is therefore neither “significant” nor “pertinent.” Fed. R. App. P. 28(j).

Mayes does not move the needle. It presents a straightforward application of the standard for a facial challenge set forth in *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). But the parties addressed *Moody* in letters filed in July of last year. Dkt. 39, 49. And their principal briefs apply the standard set forth in *Moody*. Appellants’ Op. Br. 23-29; Appellees’ Resp. Br. 55-57.

If anything, *Mayes* supports Plaintiffs’ facial challenge. The law at issue in *Mayes* prevents defense counsel from initiating direct contact with victims of crimes. 127 F.4th at 110. The plaintiffs did not challenge the statute’s application to victim-interview requests, “the law’s primary applications.” *Id.* at 107; *see also id.* at 111 (“victim interviews are the core concern of the challenged law”). Rather, the plaintiffs “direct[ed] their challenge to the edges of” the law—limitations on “conversations” and “information-sharing.” *Id.* at 111. The Court held only that “this facial challenge . . . , as framed, fails.” *Id.* at 113.

In contrast, Plaintiffs squarely challenge the entirety of HB 359, which restricts both drag story hours and vaguely defined sexually oriented performances. If the plaintiffs in *Mayes* aimed at the edges of the law, Plaintiffs’ challenge strikes at the heartland.

Sincerely,

/s/ Constance Van Kley
Constance Van Kley
Counsel for Plaintiffs-Appellees